IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1960 of 2004
With
CRIMINAL APPEAL No. 1961 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
NAGAJIBHAI MAGANBHAI BHABHOR - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. As both these appeals arise out of the common judgment and order passed by the learned Additional Sessions Judge, Fast Track Court, Panchmahals at Godhra and common facts are involved in this case, they are disposed of by this common judgment.

2. These appeals are filed by the appellant State under Section 378(1)(3)of Criminal Procedure Code, 1973 against the common judgment and order passed by the learned Additional Sessions Judge, Fast Track Court, Panchmahals at Godhra in Sessions case Nos.185/2003 and 346/2003 on 15.5.2004, whereby the learned Additional Sessions Judge has acquitted the opponents of criminal appeal nos.1960/04 and 1961/04 who are the accused nos.1 and 2 of Sessions Case No.346/03 and 185/03 respectively from the offence punishable under Section 395 of the Indian Penal Code.

2. The short facts giving rise to this appeal are such that :

A complaint came to be filed in Devgarh Baria Police Station being I C.R.No.3/2002 by the complainant Kanubhai Mathurbhai to the effect that on 8.1.2002 at about 16.15 hours, a mob of about 25-30 persons came to his house in the night and threatened

him and his family members and committed loot of valuable items from his house and that, thereafter, on inquiry he came to know that these persons have committed loot at his house, his brother's house and both his uncles' houses. After completing the investigation, the police filed charge sheet in Sessions Case No.422/02 and that case is over. Thereafter, again the police filed another charge sheet against the present opponents - accused Harubhai Tejiabhai and Nagariya Rasul Bhabhor on 4.6.2003 and against Nagjibhai Maganbhai Bhabhor on 15.10.03.

3. The case was committed to the Court of Sessions and charge was framed against the accused under Sections 397-398 of Indian Penal Code and was read over to the accused. As the accused pleaded not guilty and claimed to be tried, the learned trial Court, after recording the evidence and hearing the learned counsel for both the sides, learned trial Court acquitted the accused from the offence punishable under Section 397-398 of Indian Penal Code against which the present appeals are filed.

4. Heard Mr.K.C.Shah, learned APP for the appellant – State.

5. The judgment is challenged on various grounds mentioned in para 5 of the memo of appeal. Mr.Shah, learned APP has taken us through the

relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. On overall appreciation of evidence and considering the facts of the case, the trial Court has acquitted the accused from the charges levelled against them. The trial Court after considering the evidence on record came to the conclusion that it does not appear that the accused are involved in any manner in the offence in question, more particularly, because of the fact all the witnesses who have been examined to prove the case of the prosecution have stated one thing that the faces of the persons who committed loot were covered and, therefore, they were not able to identify them and, therefore, there is no evidence to connect the present accused with the alleged offence. Further, it is also discussed by the learned trial Court that all the panch witnesses have turned hostile and only because of the fact that the accused herein have showed the place of offence voluntarily, it cannot be said that they are connected with the offence as the Investigating officer has, in his deposition, stated that he has seen the place of offence previously and that the panchanama of scene of offence was performed in the previous case when the charge sheet was filed against other accused and, therefore, this panchanama cannot be said to be search panchanama.

7. Having heard the learned counsel for the parties and having considered the finding recorded by

the learned trial Judge, we are of the considered opinion that there is no infirmity in the reasons assigned by the learned Sessions Court for acquitting the respondents/accused. Suffice it to say that the learned trial Court has given cogent and convincing reasons for acquitting both the respondents/accused and the learned A.P.P., has failed to dislodge the reasons given by the learned trial Court and convince this Court to take a view contrary to the one taken by the learned trial Court. Therefore, there is no merit in the acquittal appeals, and the appeals deserve to be dismissed.

8. In view of the foregoing discussion, the following order is passed.

9. Both the appeals of the State are dismissed. The bail bonds, if any, shall stand discharged. Copy of this order be placed in Criminal Appeal No.1961 of 2004.

(J.R.VORA, J)

(SHARAD D DAVE, J)

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